



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

November 11, 2014

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Deniece Christie**
Tax Registry No. 943084
Housing Bureau – Bronx Viper
Disciplinary Case Nos. 2010-2373, 2011-4558,
2012-8440, 2013-8931,
2013-9127 & 2013-9695

CHAN

The above named member of the service appeared before Deputy Commissioner Martin G. Karopkin on October 10, 2013, December 20, 2013, May 13, 2014, and May 21, 2014, and was charged with the following:

DISCIPLINARY CASE NO. 2010-2373

1. Said Police Officer Deniece Christie, on or about December 29, 2009, while on duty and assigned to the 62nd Precinct, acted in a discourteous manner to Sergeant Hergenhan while inside the 62nd Precinct, in that when Sergeant Hargenhan advised Police Officer Christie that he could not assign her to a different RMP at the time of her request, Police Officer Christie slammed keys on the desk and walked away.

P.G. 203-09, Page 1, Paragraph 2

**PUBLIC CONTACT - GENERAL
GENERAL REGULATIONS**

2. Said Police Officer Deniece Christie, on or about December 29, 2009, while on duty and assigned to the 62nd Precinct, was off-post without permission or police necessity in that after Sergeant Thomas Hergenhan ordered Police Officer Christie to resume patrol in a sector car, Police Officer Christie did not immediately resume patrol but rather went to the 62nd Precinct's womens' locker room for approximately 20 minutes.

P.G. 203-05, Page 1, Paragraph 2

**PERFORMANCE ON DUTY
GENERAL REGULATIONS**

3. Said Police Officer Deniece Christie, on or about December 29, 2009, while on duty and assigned to the 62nd Precinct, was discourteous to Sergeant Thomas Hergenhan after said sergeant inquired about Police Officer Christie's whereabouts when she failed to immediately resume patrol after being directed to do so.

P.G. 203-09, Page 1, Paragraph 2

**PUBLIC CONTACT - GENERAL
GENERAL REGULATIONS**

P.O. DENIECE CHRISTIE

**DISCIPLINARY CASE NOs. 2010-2373,
2011-4558, 2012-8440, 2013-8931, 2013-9127
& 2013-9695**

DISCIPLINARY CASE NO. 2011-4558

1. Said Police Officer Deniece Christie, assigned to the 62nd Precinct, on or about November 17, 2010, while on duty and in Kings County, failed to obey the lawful order and/or instruction of Sergeant Paul Adams to enter herself into the Interrupted Patrol Log.
- P.G. 203-03, Page 1, Paragraph 2**

COMPLIANCE WITH ORDERS

2. Said Police Officer Deniece Christie, assigned to the 62nd Precinct, on or about November 17, 2010, while on duty and in Kings County, was discourteous to Sergeant Paul Adams after said sergeant directed the police officer to escort an exterminator at the Command, and after Sergeant Adams directed Police Officer Christie to place herself in the Interrupted Patrol Log and advised her that he would issue her a Command Discipline.
- (As amended)*

P.G. 203-09, Page 1, Paragraph 2

**PUBLIC CONTACT
PROHIBITED CONDUCT**

DISCIPLINARY CASE NO. 2012-8440

1. Said Police Officer Deniece Christie, assigned to the 62nd Precinct, on or about August 31, 2012, while in Kings County, failed to obey the order(s) and/or instructions of a supervising officer in that Police Officer Christie went to the hospital during her tour of duty and failed to return to the 62nd Precinct or notify a 62nd Precinct supervisor when she was released from that hospital that day, as ordered/instructed to do by a superior officer.

P.G. 203-03, Page 1, Paragraph 2

COMPLIANCE WITH ORDERS

2. Said Police Officer Deniece Christie, assigned to the 62nd Precinct, on or about August 31, 2012, reported Sick for her next scheduled tour and failed to notify the Desk Officer or supervisor at her assigned Command.

Interim Order 27, Issued: August 3, 2010

**REVISION TO PATROL GUIDE
205-01, "REPORTING SICK"**

DISCIPLINARY CASE NO. 2013-8931

1. Said Police Officer Deniece Christie, assigned to the 62nd Precinct, on or about and between October 8, 2010 and April 24, 2012, having become aware of corruption or other misconduct involving Members of the Service, did fail and neglect to notify the Internal Affairs Bureau Command Center.

P.G. 207-21, Page 1-2, Paragraph 1-3

Interim Order 9, Issued: April 7, 2008

**ALLEGATIONS OF
CORRUPTION AND OTHER
MISCONDUCT AGAINST
MEMBERS OF THE SERVICE**

P.O. DENIECE CHRISTIE

**DISCIPLINARY CASE NOs. 2010-2373,
2011-4558, 2012-8440, 2013-8931, 2013-9127
& 2013-9695**

DISCIPLINARY CASE NO. 2013-9127

1. Said Police Officer Deniece Christie, assigned to the 62nd Precinct, while on-duty, on or about February 24, 2013, inside the 62nd Precinct, failed to follow the lawful order of a Sergeant to check the Precinct's holding cell area and/or arrest processing area for cleanliness.

P.G. 203-03, Page 1, Paragraph 2

COMPLIANCE WITH ORDERS

2. Said Police Officer Deniece Christie, assigned to the 62nd Precinct, while on-duty, on or about February 24, 2013, inside the 62nd Precinct Stationhouse, was absent from her assignment as the Telephone Switchboard Operator without permission or police necessity.

P.G. 203-05, Page 1, Paragraph 2

**PERFORMANCE ON DUTY -
GENERAL**

3. Said Police Officer Deniece Christie, assigned to the 62nd Precinct, while on-duty, on or about February 24, 2013, inside the 62nd Precinct Stationhouse, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Police Officer changed out of her uniform without permission to do so.

P.G. 203-10, Page 1, Paragraph 5

GENERAL REGULATIONS

4. Said Police Officer Deniece Christie, assigned to the 62nd Precinct, while on-duty, on or about February 24, 2013, inside the 62nd Precinct acted in a discourteous manner in that when Sergeant Jason Luciano, in sum and substance, warned Police Officer Christie that she would face suspension if she failed to follow his instruction, Police Officer Christie responded dismissively and stated, in sum and substance, "Do what you have to do."

P.G. 203-09, Page 1, Paragraph 2

PUBLIC CONTACT - GENERAL

DISCIPLINARY CASE NO. 2013-9695

1. Said Police Officer Deniece Christie, while assigned to the 62nd Precinct, on or about October 7, 2012, while on-duty and in Kings County, returned property listed as "Arrest Evidence" to an individual that was previously arrested without the permission of a supervisor or the investigating officer.

P.G. 218-02, Page 2, Additional Data

**RETURN OF PROPERTY/
VEHICLE AT COMMAND AND
PROCESSING VOIDED
PROPERTY INVOICES**

P.O. DENIECE CHRISTIE

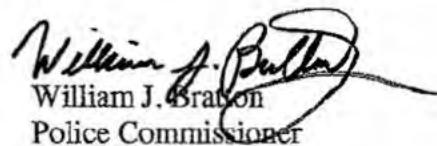
**DISCIPLINARY CASE NOS. 2010-2373,
2011-4558, 2012-8440, 2013-8931, 2013-9127
& 2013-9695**

In a Memorandum dated July 15, 2014, Deputy Commissioner Martin G. Karopkin found the Respondent GUILTY of Specification Nos. 1, 2 and 3 in Disciplinary Case No. 2010-2373, GUILTY of Specification No. 1 and GUILTY IN PART of Specification No. 2 in Disciplinary Case No. 2011-4558, GUILTY of Specification Nos. 1 and 2 in Disciplinary Case No. 2012-8440, GUILTY of Specification No. 1 in Disciplinary Case No. 2013-8931, NOT GUILTY of Specification Nos. 1, 2, 3 and 4 in Disciplinary Case No. 2013-9127 and GUILTY of Specification No. 1 in Disciplinary Case No. 2013-9695.

Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty. The Respondent was found guilty of engaging in various acts of misconduct and separation from the Department is warranted. However, instead of an outright dismissal from the Department, I will permit an alternative manner of separation from the Department for the Respondent at this time.

It is therefore directed that an **immediate** post-trial negotiated agreement be implemented with the Respondent, in which she shall immediately file for vested-interest retirement, forfeit thirty (30) suspension days (previously served), that she be placed on One-Year Dismissal Probation, forfeit all time previously served while on suspension, with and without pay, if any, waive all time and leave balances, including terminal leave, if any, and retire from the Department while on Modified Assignment.

Such vested-interest retirement shall also include the Respondent's written agreement to not initiate administrative applications or judicial proceedings against the New York City Police Department to seek reinstatement or return to the Department. If the Respondent does not agree to the terms of this vested-interest retirement agreement as noted, this Office is to be notified without delay. This agreement is to be implemented **IMMEDIATELY**.



William J. Bratton
Police Commissioner



POLICE DEPARTMENT

July 15, 2014

*The
City
of
New York*

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Deniece Christie
Tax Registry No. 943084
Housing Bureau Bronx Viper
Disciplinary Case Nos. 2010-2373, 2011-4558,
2012-8440, 2013-8931
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P.G. 203-09, Page 1, Paragraph 2 - PUBLIC CONTACT- GENERAL
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P.G. 203-05, Page 1, Paragraph 2 - PERFORMANCE ON DUTY
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P.G. 203-09, Page 1, Paragraph 2 - PUBLIC CONTACT- GENERAL
GENERAL REGULATIONS

Disciplinary Case No. 2011 4558

1. Said Police Officer Deniece Christie, assigned to the 62nd Precinct, on or about November 17, 2010, while on duty and in Kings County, failed to obey the lawful order and/or instruction of Sergeant Paul Adams to enter herself into the Interrupted Patrol Log.

P.G. 203-03, Page 1, Paragraph 2 COMPLIANCE WITH ORDERS

2. Said Police Officer Deniece Christie, assigned to the 62nd Precinct, on or about November 17, 2010, while on duty and in Kings County, was discourteous to Sergeant Paul Adams after said sergeant directed the police officer to escort an exterminator at the Command, and after Sergeant Adams directed Police Officer Christie to place herself in the Interrupted Patrol Log and advised her that he would issue her a Command Discipline. (*As amended*)

P.G. 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT
PROHIBITED CONDUCT

Disciplinary Case No. 2012-8440

1. Said Police Officer Deniece Christie, assigned to the 62nd Precinct, on or about August 31, 2012, while in Kings County, failed to obey the order(s) and/or instructions of a supervising officer in that Police Officer Christie went to the hospital during her tour of duty and failed to return to the 62nd Precinct or notify a 62nd Precinct supervisor when she was released from that hospital that day, as ordered/instructed to do by a superior officer.

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2. Said Police Officer Deniece Christie, assigned to the 62nd Precinct, on or about August 31, 2012, reported Sick for her next scheduled tour and failed to notify the Desk Officer or supervisor at her assigned Command.

Interim Order 27, Issued: August 3, 2010 REVISION TO PATROL GUIDE
205-01, “REPORTING SICK”

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P.G. 207-21, Pages 1-2, Paragraphs 1 3 – ALLEGATIONS OF CORRUPTION
Interim Order 9, Issued: April 7, 2008 AND OTHER MISCONDUCT AGAINST
MEMBERS OF THE SERVICE

Disciplinary Case No. 2013-9127

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2. Said Police Officer Deniece Christie, assigned to the 62nd Precinct, while on-duty, on or about February 24, 2013, inside the 62nd Precinct Stationhouse, was absent from her assignment as the Telephone Switchboard operator without permission or police necessity.

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P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

4. Said Police Officer Deniece Christie, assigned to the 62nd Precinct, while on-duty, on or about February 24, 2013, inside the 62nd Precinct acted in a discourteous manner in that when Sergeant Jason Luciano, in sum and substance, warned Police officer Christie that she would face suspension if she failed to follow his instruction, Police Officer Chrisite responded dismissively and stated, in sum and substance, "Do what you have to do."

P.G. 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT GENERAL

Disciplinary Case No. 2013-9695

1. Said Police Officer Deniece Christie, while assigned to the 62nd Precinct, on or about October 7, 2012, while on-duty and in Kings County, returned property listed as "Arrest Evidence" to an individual that was previously arrested without the permission of a supervisor or the investigating officer.

P.G. 218-02, Page 2, Additional Data - RETURN OF PROPERTY/VEHICLE AT COMMAND AND PROCESSING VOIDED PROPERTY INVOICES

The Department was represented by Scott Rosenberg, Esq., Department Advocate's Office, and Respondent was represented by Eric Sanders, Esq.

Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2010-2373

Respondent is found Guilty of all three specifications in this case.

Disciplinary Case No. 2011-4558

Respondent is found Guilty of Specification No. 1 and Guilty in Part and Not Guilty in Part with regard to Specification No. 2.

Disciplinary Case No. 2012-8440

Respondent is found Guilty of both specifications in this case.

Disciplinary Case No. 2013-8931

Respondent is found Guilty of the single specification in this case.

Disciplinary Case No. 2013-9127

Respondent is found Not Guilty of the four specifications in this case.

Disciplinary Case No. 2013-9695

Respondent is found Guilty of the single specification in this case.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Police Officer Alex Kajewski, Lieutenant Jason Luciano, Sergeant Thomas Hergenhan, Sergeant Suzanne Anselmo, Lieutenant Akeita Brown (retired), Police Surgeon Sandeep Sirsi, Sergeant Brian Scalise, Sergeant William Chien, Sergeant Paul Adams and Police Officer Thomas Chan.

Police Officer Alex Kajewski

Kajewski, a seven-year member of the Department, is currently assigned to the 62 Precinct in the Anti-Crime Unit.

On February 24, 2013, he was assigned a court tour, and at about 10:00 a.m., he was present inside the 62 Precinct when he saw an interaction between Sergeant Luciano and Respondent in the area between the front desk and the telephone switchboard (TS) operator. Luciano was behind the front desk and Respondent was by the TS, which was diagonal to the right of the front desk. Kajewski was standing by the exit gate, about five to seven feet from the TS and about 15 feet from the front desk.

Kajewski heard Luciano ask Respondent to clean the prison cells, to which Respondent replied that she was restricted and could not. Luciano then checked the cells and told Respondent that because there were no prisoners inside, she could clean the cells. Respondent said no, at which point Luciano asked her if she did not want to do it or if she had a medical condition and was sick, in which case she could "go out sick." Respondent replied, "[T]his is ridiculous, I'm not doing it." Luciano asked her again and Respondent declined to clean the cells. Kajewski testified that Respondent's demeanor was defiant.

Respondent left and went downstairs. Kajewski did not hear Respondent ask Luciano for permission to leave the desk area. Respondent was away from the desk for about five to ten minutes. When she returned to the desk, Respondent was wearing civilian clothes. Kajewski did not hear Respondent ask, or Luciano give, permission for Respondent to change into civilian clothing.

Kajewski testified that upon her return, Respondent's demeanor was combative and defiant. Luciano told her that she could either go out sick or clean the cells. Respondent told Luciano that he could give her a Command Discipline (CD) but she was not cleaning the cells. Luciano said that if she did not, he would suspend her. At that point, Kajewski left the precinct.

On cross-examination, Kajewski testified that he had worked with Respondent multiple times, that their working relationship was good and when out in the field, Respondent was not defiant. Respondent performed her duties and responsibilities like other members of the service.

Kajewski could not recall telling Respondent that others in the precinct said that she was "IAB." Kajewski could not recall whether, while on meal with Respondent, he told her, "[H]ey, you're not IAB, are you? Don't fuck with us."

Kajewski was on court tour on the date of the incident. He arrived at the precinct at 8:00 a.m. and his responsibilities before going to court were "to come in, sign in, take my paperwork and leave." He spent two hours going through his Desk Appearance Ticket (DAT) package for court. Although he was administrative from 8:00 a.m. until 10:00 a.m., he did not recall if he placed himself in the Interrupted Patrol Log or if his desk officer

asked him to do so. He testified that, as a general rule, when he was in the stationhouse and not on patrol, he would place himself in the Interrupted Patrol Log.

Before the date of the incident, Kajewski was aware that Respondent had had [REDACTED] [REDACTED] surgery, which was common knowledge in the command. He did not know that she had a [REDACTED] as well. He knew that Respondent had medical restrictions as to the type of work she could perform in the stationhouse.

Kajewski observed Respondent explain to Luciano that she could not clean the cells because she was restricted. He testified that Respondent tried to give Luciano an explanation, and that she did not either walk away or ignore him. Luciano's response was to walk in the cells and check for prisoners. Kajewski testified that Luciano specifically asked Respondent to clean the cells and not to inspect the cells.

Kajewski did not observe Luciano call the Medical Division to find out what, if any, restrictions Respondent had. Kajewski did not hear Luciano ask Respondent what her restrictions were. Kajewski heard Luciano ask Respondent in a professional, yet loud and authoritative, tone to clean the cells. Respondent, appearing slightly upset, said no and "it's ridiculous."

Kajewski did not know whether Respondent made any phone calls before leaving the TS. He did not know why she left, and he did not know why she returned wearing civilian clothes. When Luciano said that he would suspend Respondent for not cleaning the cells, Kajewski heard Respondent reply, "do what you have to do" and "you can give me a CD if you want." Kajewski then saw Luciano make a phone call but he did not know to whom the call was made. When Kajewski left the precinct, Respondent was still there and he did not know whether she eventually went to the hospital.

Kajewski had heard that Respondent had difficulties with her supervisors in the 62 Precinct. He had heard that Respondent had made complaints about misconduct in the 62 Precinct. He had not heard that Respondent had made claims of racial discrimination.

Kajewski had worked with Police Officers Damian McIntosh and Claude Policart in the past and he had heard that McIntosh had problems with his supervisors and that Policart complained of racial discrimination. Kajewski acknowledged that in his six years at the 62 Precinct, he had received a CD but that he had never been served with charges and specifications.

On re-direct examination, Kajewski testified that cleaning the cells involved picking up the garbage and sweeping the floor. During her interaction with Luciano, Respondent's tone was loud.

Lieutenant Jason Luciano

Luciano, a ten year member of the Department, is presently assigned to the Police Academy. On February 24, 2013, he was assigned to the 62 Precinct as a sergeant of the day tour platoon and was working as the desk officer. Respondent was also working that day and she was assigned as the TS operator.

At about 11:15 a.m., Luciano gave Respondent the assignment of checking the cell area to make certain that it was free of contraband and any other unauthorized items. Luciano described the cell area as a small room with two separate cells and explained the assignment as "[g]oing inside the cell area, checking the floor, the bench where the perpetrators sit, just doing a visual inspection to make sure there is nothing on the floor that shouldn't be there." Luciano testified that if Respondent had observed debris, then she

would have had to pick it up and if there was any contraband, she would have had to notify Luciano. At the time of the assignment, no prisoners were inside the cells.

When Luciano first gave Respondent the assignment, she looked at him with annoyance, left her seat and walked towards the cell area. Luciano watched Respondent on multiple monitors and did not see either the lights in the cell area turn on or Respondent walk inside.

Within "a minute or two," Luciano saw Respondent return to the TS and sit down. Luciano again asked Respondent to inspect the cell area because by watching the monitors, he knew that she had not. Respondent replied that she was on restricted duty and that she would not do it. Luciano told her that "being on restricted duty means that you can't have any contact with prisoners" and because there were no prisoners in the cell area, she had to inspect it. Respondent declined to do so, citing her illness.

Luciano told Respondent that if she felt too sick to perform her duties for the day, then she either had to call out sick and see the district surgeon or listen to Luciano's lawful order. Luciano then saw Respondent use the telephone and afterwards, she told Luciano that she had called the Medical Division and intended to see the district surgeon. Luciano did not give, and Respondent did not seek, permission to use the telephone.

Luciano, under the impression that Respondent had called sick, said okay and watched her leave the TS area. About 10 to 15 minutes passed and Respondent did not return, so Luciano asked Police Administrative Aide (PAA) Small to go to the locker room to make certain Respondent was okay and had called out sick. Small left and upon her return, she told Luciano that Respondent was in the locker room and she will "be up in a minute."

About five minutes later, Respondent returned to the desk area and she was dressed in civilian clothing. Luciano did not give, and Respondent did not seek, permission to change into civilian clothes. Luciano repeatedly asked her if she had called out sick, which she repeatedly did not answer, and instead replied that she intended to see the district surgeon. Luciano told Respondent that as her supervisor, he had to know whether she had called out sick.

During this encounter, Respondent looked annoyed and did not make eye contact. Luciano, frustrated, gave her two options either to call out sick or to return to her assigned duties. Respondent told Luciano that she wanted to think about it. Luciano said no and demanded an answer immediately. Respondent remained quiet, so Luciano said that he had given her a direct order and she was "very close to being suspended." Respondent looked at Luciano with a smirk and said, "[I]f you want to suspend me for not cleaning the cells, then do what you've got to do," and walked away. Respondent was not loud during the encounter but she was also not listening to Luciano.

A few minutes later, Respondent returned and was using her cell phone. Luciano did not give, and Respondent did not seek, permission to use her cell phone. Luciano asked Respondent to hand over her identification card and to stand by because he was notifying the duty captain.

Luciano was not informed that Respondent, due to her medical restrictions, could not inspect the cell area. He testified that it was very common for supervisors in the 62 Precinct to direct the officers to inspect or clean the cell area.

With respect to the August 31, 2012 incident, Luciano was working as the desk officer at the 62 Precinct when he was informed by another desk officer that at some point

that day, during her tour, Respondent went out sick and to the hospital. A uniformed member of the service did not escort Respondent to the hospital because there had been a couple of line of duty injuries and there were no officers available to accompany Respondent.

Saul, a community liaison for the 62 Precinct, called the hospital that day and instructed the hospital employee to hand the phone to Respondent so that Luciano could speak with her, but Respondent refused to get on the phone. About one or two hours later, Luciano called Respondent on her cell phone and left two voice-mail messages, asking her to call the desk, as the precinct needed to know her condition and if she was discharged, to have her picked up and returned to the command. Respondent did not call back. Subsequently, Respondent was out sick and upon her return, Luciano asked her why she did not call back, and she said that she was not feeling well and did not want to be bothered.

On cross-examination, Luciano admitted that on February 24, 2013, he did not know what medical restrictions Respondent had. He admitted that he did not call the Medical Division before making his own determination of what Respondent's medical restrictions were. He admitted that he formed his own opinion that her medical restriction was no prisoner interaction.

Luciano acknowledged that as a supervisor, he was trained to check into the medical restrictions of his subordinates and he did not do so with Respondent. Luciano admitted that he had Respondent suspended because on February 24, 2013, she did not follow his order to clean the cell area based on his own interpretation of what her medical restrictions were.

Luciano admitted that he did not check to see if Respondent called the Medical Division on February 24, 2013. He admitted that, as a supervisor, he could have easily verified that she had called the Medical Division to see the district surgeon but from her responses, he came to the conclusion that she did not call out sick. He admitted that at the time of the incident, he was “a little agitated.”

Luciano testified that although Respondent was assigned as the TS operator, he asked her to “inspect the cells for any contraband and for any unauthorized items. If there was anything in the cells that she felt she couldn’t remove, then she could have told me and we could have took it from there.” Luciano admitted that Respondent told him that she was restricted, although she did not provide him with the details.

When Luciano assigned Respondent with the task, she was the TS operator. While Respondent was checking the cell area, no one else was covering the TS position. However, there was a PAA working who would have answered the phone.

Luciano testified that he wanted the cell area checked because the prisoner transport had been completed. Luciano said that he was able to observe “basically 90 percent” of the cell area through the monitor. He admitted that he was not able to see the doorway to the cell area on the camera. He insisted that he knew that Respondent did not go inside the cell area and that she did not inspect the cells because he “was visually watching.”

When Respondent returned to the TS, Luciano testified that he asked her if she was going to check the cell area because he “just witnessed that she didn’t go inside.” According to Luciano, Respondent said that she was restricted, which Luciano took it upon himself “to say it has to do with prisoner contact.” Luciano told Respondent that because there were no prisoners in the cell area, she “can go in there and check....” Respondent

told him that she felt sick, to which Luciano replied that if she felt sick, she should "call out sick and go see the surgeon. If not, you have to do your described duties for the day."

Luciano testified that he did not believe he gave Respondent permission to use her cell phone. He admitted that other members of the service did not seek permission to use their cell phones, each and every time they did so in the precinct. He admitted that he saw other members of the service "with cell phones all day long." Luciano testified that he never gave any members of the service a CD for using their cell phones, although he warned and admonished them. Luciano admitted that Respondent was "not unique" in using her cell phone and that he did not know who she was calling. Luciano admitted that he did not know if Respondent was calling IAB or the Medical Division at the time, and that if she was, it was a proper use of her phone.

Luciano testified that he did not know of any rule that prohibited a member of service from changing into civilian clothing before going to the hospital from the command. He said that if she had called out sick, then she could have dressed down to visit the medical district. "The problem is she didn't call out sick, so there is no point of her dressing down."

Luciano said that he asked her that day if she had called out sick, and she told him that she had called the Medical Division and was going to see the surgeon. He admitted that as her supervisor, he could have easily verified if she had called the Medical Division but he did not and "came to the conclusion that she didn't call out sick."

Luciano admitted that immediately afterwards, he asked Respondent for her identification and told her to stand by for the duty captain. Luciano admitted that he told her that if she did not listen to a lawful order, that she would be suspended. Luciano

admitted that he called the duty captain and he had Respondent suspended "because she did not follow [his] order to go clean the cells based upon [his] interpretation of her restrictions."

With respect to Disciplinary Case No. 2012-8440, Luciano testified that when he began his tour that day, he was told by the previous tour that Respondent became sick at work and went to Maimonides Hospital. Luciano was told that Respondent did not have another member of the service escort her to the hospital "because of personnel allocation." He did not know if that was true, but that was what he was told. Luciano testified that the patrol supervisor, Sergeant Bozanetti, went to the hospital during his tour to check on the condition of Respondent and was told when he arrived that she had been discharged.

Luciano admitted that at the time, he knew that Respondent had medical restrictions and that he had heard that she had had open heart surgery. Luciano had not heard that she had a heart aneurysm as well.

Luciano testified that he was told that the command had tried to reach out to Respondent and she had allegedly refused to take the phone call. Luciano admitted that the person he used to reach out to Respondent was not an employee of the Department but a community liaison. Respondent did not want to speak with him. After the incident when Respondent returned to work, Luciano spoke with her and she told him that she did not call back because she did not "want to be bothered."

Luciano admitted that the command receives a teletype via email when a member of the service calls the Medical Division and goes out sick. As the desk officer, Luciano admitted that he was supposed to be monitoring the emails, which he said that he did.

Luciano described his relationship with Respondent as supervisor-subordinate. He said that he never heard any claim that Respondent was “a rat because she was reporting people in the 62nd Precinct for misconduct” or discrimination.

On re-direct examination, Luciano testified that he was never told before February 23, 2013, that Respondent could not inspect or clean the cells because of her restriction.

According to Luciano, when he told Respondent that he was “close to getting suspended,” she said “if you want to suspend me for not cleaning the cells, do what you’ve got to do.”

Sergeant Thomas Hergenhan

Hergenham, an eleven-year member of the Department, is presently assigned to the 62 Precinct as the Anti-Crime Sergeant. On December 29, 2009, he was the assigned desk officer at the 62 Precinct and was working the 2:50 p.m. to 11:47 p.m. tour. Respondent, who was working that day, was assigned to prisoner transport at the beginning of her tour and then subsequently was reassigned as a sector car.

At about 7:00 p.m., Respondent returned to the precinct from prisoner transport and came to the desk, whereupon Hergenhan informed her and her partner that she was assigned a sector. Respondent was “angry, hostile and combative” and requested a different patrol car. When Hergenhan asked why, Respondent said that the car she was assigned did not have heat and that it did not work. When Hergenhan asked what did not work in the car, Respondent said it did not have heat. When Hergenhan asked “is that all?”, Respondent said that the car did not have heat.

Upon checking the board to see if any Radio Motor Patrol (RMP) cars were available to assign to Respondent, Hergenhan did not find any and informed Respondent that she must go on patrol and that if a car became available, he would call her back to the command and allow her to switch cars. Respondent slammed the car keys on the desk and after a few seconds, she walked away. She did not ask, and Hergenhan did not give, permission for Respondent to leave the desk area.

Respondent did not inform Hergenhan where she was going and after 15 minutes, Hergenhan asked her partner if he knew where Respondent was. Upon being told that Respondent was in the women's locker room/bathroom, Hergenhan asked a female officer to check on her whereabouts. The female officer did so and upon her return told Hergenhan that Respondent was sitting on a bench writing notes in her Activity Log, and she said that she would come up when she was ready.

About five minutes later, at about 7:20 p.m., Respondent returned to the desk. Hergenhan asked if she was ready to go out on patrol and Respondent again asked for a different RMP. Hergenhan told her that none was available and that an RMP was not required to have heat. Respondent asked if she could call a union delegate, to which Hergenhan said that she may do so when she went back out on patrol. Hergenhan asked about her whereabouts during the previous 20 minutes, to which she replied that if he "needed to know," she was downstairs in the bathroom. Hergenhan said that he did need to be aware of her whereabouts and she should have requested a personal, so that he could have entered her in the Interrupted Patrol Log. Respondent became enraged, combative and hostile, yelling at Hergenhan that "[I]f that's the way I'm going to play, that's the way I'm going to be, do what you have to do," and she left the precinct to go out on patrol.

Hergenhan testified that during his patrol days, he had been assigned RMPs without heat during cold weather. Respondent's sole complaint about the RMP was the lack of heat and he did not observe any injuries on Respondent's person.

On cross-examination, Hergenhan testified that heat in a patrol car was a comfort but not a safety issue. He also testified that when Respondent told him that the car did not work, he asked her to explain and she only said that it did not have heat.

He testified that as a supervisor, it may be his obligation to see if the patrol car had a service problem. Brakes are a safety issue and very important to have in a properly working car. He did not check the brake history of the car at the time Respondent complained about the car, and he did not know that about a month before her complaint, the car in question had been in a repair shop because of issues with the front and rear brakes. He also did not know that two months after her complaint, the same car was in the repair shop for defective front brakes.

Hergenham testified that when a desk officer is informed of a problem with an RMP, he must investigate and find out if minor repairs are necessary or if the car should be "put out of service." He did not do any of the above in this instance because he was not informed of any problems with the car other than the lack of heat.

Hergenham testified that besides a lieutenant's car, there were no other vehicles available that evening. He testified that the lieutenant's car was not his car "to give out" and he believed that a lieutenant "was coming in later on and might have needed to use that car." He acknowledged that the lieutenant's car was a police vehicle and belonged to the City of New York.

According to the Daily Vehicle Assignment Sheet for December 29, 2009 (Respondent's Exhibit [RX] A), RMP 4870 was at the stationhouse that evening. When asked why he did not assign Respondent that car, Hergenhan initially testified that "it was not there at the time," then testified that "[i]t might have had a change of assignment. At the beginning of the tour, it might have been at the stationhouse," and subsequently testified, "[o]r there also may not have been keys for it The car might have been at the stationhouse, but there were no keys for it," and finally testified that it could not have been assigned because he did not have the set of keys for it. "That might have been the case. I don't know."

With respect to RMPs 4875 and 4607, which were in the stationhouse that evening according to the Daily Vehicle Assignment Sheet (RX A), Hergenhan testified that his answer was the same as for RMP 4870, as to why it was not assigned to Respondent. Looking at the sheet, Hergenhan testified that it is a document filled out in the ordinary course of business at the 62 Precinct and showed available equipment to be used on patrol. He testified that the desk officer, which he was on December 29, 2009, usually filled out the sheet. He insisted that his trial testimony was more accurate than what is written on RX A for December 29, 2009.

Hergenhan testified that after Respondent's return from the locker room/bathroom, she did not show him and he did not ask to see her Activity Log. He described his relationship with Respondent as a professional one, and he testified that she had never yelled at him or been angry with him before. He had not heard that Respondent had complained of racial discrimination or misconduct, such as a female officer sleeping in the locker room at the 62 Precinct.

Sergeant Suzanne Anselmo

Anselmo, a 13-year member of the Department, is presently assigned to the 62 Precinct as a patrol sergeant. On October 7, 2012, Anselmo was the assigned desk officer working a day tour from 7:00 a.m. to 4:00 p.m. Respondent was working that day as the TS operator. The telephone switchboard was about seven feet in front of, and two feet to the right of, the front desk.

At about 9:00 a.m., Anselmo saw an evidence envelope, which was a plastic envelope with invoices stapled to it, on the front desk. The invoices were "regular invoice, property invoice and a return receipt," and the property was categorized as evidence.

About half an hour after finding the property envelope on her desk, Anselmo who was busy with a prisoner and "other stuff," asked Respondent if she had returned the property to the individual, to which Respondent said yes. Respondent, who was required to notify Anselmo of the return, failed to do so. Respondent never sought Anselmo's permission to return the property to the individual. If Respondent had sought permission, Anselmo would have taken the identification and the invoice and made sure it was being returned to the right person and then given it to Respondent to return the property.

The Property Clerk Invoice [Department's Exhibit (DX) 1] was categorized as arrest evidence. An officer is never authorized to return arrest evidence because it is being held as evidence and the "prisoner can't get it back." The Property Return Receipt (DX 2) showed that Respondent was the officer who returned the property and it was dated October 7, 2012.

On cross-examination, Anselmo testified that she knew Lieutenant Brown, who was the Integrity Control Officer (ICO) at the 62 Precinct. Anselmo remembered being

interviewed by Brown about the release of the property by Respondent. She remembered telling Brown that she did not have a conversation with Respondent about the returned property but she stated that she asked Respondent "a yes or no question."

Lieutenant Akeita Brown

Brown, a 20 year member of the Department, retired on August 13, 2013. He was assigned the ICO at the 62 Precinct when Respondent was working there.

With respect to Disciplinary Case No. 2013 8931, Brown conducted an investigation of Respondent regarding her alleged failure to notify the Internal Affairs Bureau (IAB) of misconduct among members of the service. Brown became aware of the alleged failure while interviewing Respondent about a verbal dispute between her and another female officer. During the interview, Respondent told him that she had observed female officers sleeping in the female locker room while on duty. Respondent told Brown that she observed the misconduct on about two occasions; she informed the Office of Equal Employment Opportunity (OEEO) about it and took photographs of the misconduct. According to Brown, notifying OEEO was insufficient and that when a member of the service becomes aware of misconduct, she must notify IAB.

With respect to Disciplinary Case No. 2012-8440, Brown was not present when Respondent informed the sergeant that she was sick, but he was present when Emergency Medical Services (EMS) was attending to her. Brown was told that Respondent was complaining of chest pain and she went out sick. Respondent's tour on August 31, 2012 was 7:00 a.m. to 3:40 p.m. and she had a clerical assignment. Respondent was on limited

duty. When Brown arrived at the command that day, an ambulance and EMS were present and Respondent was taken to the hospital.

On August 31, 2012, at about 8:00 p.m., Respondent had called the Sick Desk. Respondent's next scheduled tour of duty was on September 1, 2012, second platoon. Respondent did not arrive at the command for her tour of duty and went to the Department Surgeon's office, where she called sick.

Brown testified that as "per the interim order, [Respondent] is supposed to notify the desk first, then she is supposed to call the sick desk to get a control number and inform the desk officer of that control number." However, Brown was told by his commanding officer that Respondent failed to inform the command officer, as she was required to, that she was sick.

During her official Department interview on November 20, 2012, Brown asked Respondent whether she notified the command that she was reporting sick on September 1, 2012 and Respondent said no, that she had called the Department Surgeon. Respondent told Brown that she never called the command.

On cross-examination, Brown testified that he was assigned to the 62 Precinct in October, 2009. Brown said that he did not know Police Officer Claude Policart or Police Officer McIntosh. Brown said that he became the ICO at the 62 Precinct around September, 2010, and that before he became the ICO, he knew Respondent as one of the officers working in the command. He did not believe that Respondent worked directly for him as a subordinate. He described his relationship with Respondent before he became the ICO as cordial.

Brown testified that he observed Respondent at work and described her as an average officer. He also testified that he had heard from other supervisors that Respondent "was a problem officer," but he was not told what that meant. Brown was not aware that Respondent had made complaints of discrimination. Brown did not review Respondent's Central Personnel Index when he first became the ICO.

Brown admitted that Respondent made an allegation against him alleging that he hid behind a locker in the female locker room when she entered. Brown testified that the allegation was false, although he admitted that he was in the female locker room when Respondent was there. Brown said that he was inspecting the locker room, which is part of his job as an ICO.

Brown testified that before entering the female locker room, he has to announce himself and when possible, take a female officer with him. Brown said that from his recollection, there were no female officers working that day. The purpose of the inspection was to determine if there was anyone there that was not supposed to be there or if there was any damage to the lockers.

On the day of the incident, Brown testified that as he was coming from around the last locker, Respondent entered the locker room. Brown denied that he was hiding behind the locker. Brown said that his assistant informed him of Respondent's allegation against him, which was that he was hiding behind Respondent's locker. Brown admitted that Respondent's locker was in the row of lockers from which he emerged.

Brown testified that Respondent never complained to him as the ICO that she was being discriminated against at the 62 Precinct. Brown said that Respondent never told him

that she was being unfairly disciplined at the 62 Precinct. Brown said that Respondent never told him that she was receiving unfair CDs by her supervisors.

Brown said that he was never notified by OEEO about Respondent's allegations against him. Brown admitted that he was interviewed regarding Respondent's allegation against him by Brooklyn South Inspections Unit, which was the same unit that he was performing an investigation with against Respondent.

With respect to Disciplinary Case No. 2012-8440, Brown denied that Respondent approached the desk officer while he was standing there to inform them that she was sick. Brown said that he walked away from the desk while Respondent was receiving medical treatment. Brown testified that no officer accompanied Respondent to the hospital. Brown said that Sergeant Chien told him that he had three other members of the service who had line of duty injuries at that time, that "they were very short manpower wise," and that when Respondent was released from the hospital, Chien would send "an officer to the hospital to pick her up and bring her back to the command to complete her tour." Brown later learned that Respondent left the hospital without informing Chien.

Brown was not aware if Respondent called the command that day to get a ride and was told that no RMP was available. During the course of the investigation, Brown learned that one of the sergeants called Respondent at the hospital and asked her status. During her official Department interview, when Respondent was asked why she left the hospital and went home on her own, she said that she felt that she was treated unfairly, "so she didn't bother calling the command for a ride back to the command, and she took she jumped on the train and got her personal car at the command and went home." Brown

testified that he never called OEEO to report Respondent's allegation that she was being treated unfairly.

Brown acknowledged that there were methods for the Sick Desk to notify the command that a member of the service was going out sick. Those methods included "using the phone" or the "FINEST Message." Brown also acknowledged that part of the duties and responsibilities of the desk officer was to monitor the FINEST Message, and he admitted that if the desk officer had been monitoring it, he would have seen that Respondent had called out sick.

With respect to Disciplinary Case No. 2013-8931, Brown admitted that during her official Department interview, Respondent told Brown that she reported the allegation of corruption to OEEO. He said that Respondent did not tell him that the allegations were being referred to IAB. Brown testified that, as per Interim Order 9 dated April 7, 2008, the only way to notify the Department about corruption was through IAB. Although not a part of the interim order, Brown said that a member of the service could also inform the ICO about corruption. Brown denied that Respondent told him that the reason she did not report the incident to OEEO was because when she made previous allegations, "no one listen[ed] to her."

On re-direct examination, Brown testified that he was issued a CD for improper Command Log entry with respect to the allegation of being in the female locker room. Brown also testified that one or two of the investigations against Respondent were conducted jointly with the Brooklyn South Investigations Unit.

Police Surgeon Sandeep Sirsi

Sirsi, a seven-year member of the Department, works for the Medical Division as a police surgeon and his main responsibility “is to ensure that members of service are fit for duty, and also to aid them during their illness in convalescing.” Before working for the Department, Sirsi was an attending surgeon at SUNY Downstate, Long Island College Hospital. Besides working for the Department, Sirsi is also Chief of General Surgery, as well as an attending surgeon, at Brooklyn Hospital. Before starting his position at SUNY Downstate in February, 1999, Sirsi completed his residency and fellowship.

On or about July, 2012, Sirsi saw Respondent in his role as a district surgeon at the Medical District in Lefrak City. Sirsi determined that Respondent had multiple medical issues, including [REDACTED], [REDACTED]. At the time of her visit, Respondent was out sick. After seeing Respondent, Sirsi placed Respondent on restricted duty and the restrictions meant that Respondent “would work inside, indoors, the confines of the command.”

Pursuant to his examination of Respondent, Sirsi prepared a Restricted Duty Designation Form (DX 3), where he placed an X mark next to “limited amount of laborious work,” which he testified meant “heavy lifting greater than 20 pounds, 15 pounds or so, multiple repeated activities.” According to Sirsi, cleaning a cell of contraband or debris in a precinct did not constitute laborious work. Sirsi also testified that as part of her restriction, Respondent could have swept the cell in the precinct if asked and that she could have inspected the cells if there were no prisoners inside.

On cross-examination, Sirsi acknowledged that he did not see Respondent again after placing her on restricted duty on July 23, 2012. Sirsi said that he was not Respondent's covering surgeon.

Sirsi testified that he did not consider sweeping to be laborious work because it is the "simple process of using a broom to sweep in a small confined area." Sirsi admitted that he had never been to the 62 Precinct and that he did not know what the cells looked like. He admitted that he did not know what the area that she was being told to sweep looked like. He admitted that he did not know the lighting conditions in the cell area. He said that lighting can possibly cause problems for a person with migraines, and said that he did not know what the lighting conditions were at the command when Respondent was told to go into the cell area. Sirsi said that he could not answer the question of whether chemicals can cause a reaction that would trigger a migraine.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Sirsi testified that hypertension or [REDACTED] could be caused by many medical conditions. Before seeing Respondent, Sirsi looked at her medical history and he learned that she had multiple medical issues, including [REDACTED] in 2010. Sirsi said that Respondent had surgery for [REDACTED], and after [REDACTED], she was returned

back to duty. He did not know why she was returned to full duty as he was not her district surgeon. Sirsi did not remember how long Respondent was full duty.

Sirsi admitted that other than the one time that he saw Respondent, he did not know anything else about her medical condition.

Sergeant Brian Scalise

Scalise, a seven-year member of the Department, is presently a patrol sergeant at the 73 Precinct, where he has been working since October, 2012. From May, 2009, to September, 2012, he was working as a patrol officer at the 62 Precinct.

On December 29, 2009, Scalise was working the 3:00 p.m. to 11:35 p.m. tour at the 62 Precinct. At Roll Call, he was assigned to a DOA and upon returning from the DOA to the command at about 5:00 p.m., he was assigned to do prisoner transport with Respondent as his partner. Upon returning to the precinct at about 7:00 p.m., he and Respondent presented themselves at the desk, where Hergenhan was the desk officer. Scalise did not recall anyone else being present at the desk.

Scalise asked Hergenhan for an assignment and Hergenhan told Scalise and Respondent to resume patrol. Respondent left and Scalise stood in front of the desk. Respondent did not tell Hergenhan or Scalise where she was going when she left. Scalise was instructed by Hergenhan to wait for Respondent at the desk, which Scalise did for about 20 minutes.

After Hergenhan sent Police Officer Calderado to look for Respondent, Calderado returned and said that she saw Respondent in the female locker room. When Calderado

told Respondent "to come up," Respondent replied not yet. When Respondent returned to the front desk, she "refused to go back out on patrol."

Hergenhan insisted that she resume patrol, and Respondent complained about the car, that it did not have adequate heat, and also about her hand, that "something was wrong with her hand." While Scalise described Respondent as being agitated and curt in her responses, he described Hergenhan as calm and normal during the interaction with Respondent.

Scalise testified that Hergenhan repeatedly asked them to resume patrol in the same vehicle, a marked patrol car, which they had used during the prisoner transport when Respondent was the operator of the car. Scalise did not recall Respondent making any complaints about the car during the prisoner transport or while they were returning to the command. Scalise testified that Respondent did not make any complaints about her hand during the prisoner transport.

Scalise said that when he and Respondent resumed patrol, there was heat in the car. Scalise testified that upon resuming patrol, he saw Respondent on the phone with a delegate, who asked Respondent if she wanted another car, they would try to get another car, but Respondent told the delegate that they had heat in the car. Scalise testified that based upon his knowledge as a police officer and sergeant, RMPs are not required to have heat before members of the service use them on patrol.

On cross-examination, Scalise testified that he did not recall Respondent complaining about the brakes not working properly in the RMP. He did not recall whether she complained to Hergenhan about the brakes in the car. Scalise said that she complained

about the heat. Scalise testified that he did not know the history of the car and that he did not call the central repair shop regarding problems with the car.

Scalise said that when he and Respondent walked into the stationhouse after the prisoner transport, Respondent had no complaint of pain. After returning from the locker room, she complained that "something had happened in the locker room to her hand."

Scalise believed that, upon resuming patrol, Respondent continued to be the operator of the vehicle. Looking at his Activity Log did not refresh Scalise's recollection as to who was the operator of the car when they resumed patrol. Scalise testified that the operator of the RMP must inspect the vehicle, must make notations in his Activity Log about the interior and exterior of the car, including any damage and any operating issues with the car.

Sergeant William Chien

Chien, an eight-year member of the Department, has been assigned to the 62 Precinct since January 30, 2012, covering third platoon patrol.

On August 31, 2012, Chien was working the 6:55 a.m. to 3:52 p.m. tour as the desk officer. Respondent was working as well that day, around the same tour, as the TS operator. At about 10:00 a.m., as Chien "was dealing with a bunch of cops going line of duty," Respondent approached the desk and informed Chien that she was suffering from chest pains and was going to the hospital. Respondent said that she "going to get dressed down." Chien said that he was going to call her an ambulance.

Chien testified that Respondent then walked down the stairs to change into civilian clothing. Chien requested over the radio that an ambulance arrive at the stationhouse.

Respondent then returned to the front desk, at which point Chien informed her that an ambulance had arrived. Chien told Respondent to provide him with an update on her status and that she would have to return to the stationhouse when she left the hospital to finish the line of duty paperwork.

Chien testified that he prepared the line of duty paperwork on Respondent because when he called the Sick Desk, he was told to make certain that the line of duty paperwork was filled out so that the City covered Respondent's hospital bills.

Chien did not recall which hospital Respondent was transported to. Chien did not provide Respondent with a police officer as an escort to the hospital because "we were also dealing with a lot of stuff going on, such as multiple officers going line of duty as well, and pretty much low manpower at that point."

At some point that day, Chien asked Police Officer Thomas Chan to contact Respondent while she was at the hospital. Chan was the only one who had Respondent's number. Chien testified that Chan spoke with Respondent on the telephone and confirmed that he was on the phone with her, at which point Chien, through Chan, ordered Respondent to let the command know when she was finished at the hospital, to call the desk with any further updates, and to return to the command when she left the hospital.

While at the hospital, Respondent did not call the desk to report her condition. Chien's tour ended at 3:52 p.m. and Respondent did not return to the precinct after the hospital while Chien was at the stationhouse.

On cross-examination, Chien testified that he ordered Chan to deliver an order to Respondent. When asked if he knew Chan delivered the order to Respondent, he testified that he presumed that the order was given.

Sergeant Paul Adams

Adams, a 14-year member of the Department, has been assigned to the 62 Precinct since November, 2008. On November 17, 2010, he was working the 6:55 a.m. to 3:52 p.m. tour as the desk officer. Respondent was assigned as the TS operator.

At some point during Adams' tour that day, an exterminator, an outside contractor, visited the command and Adams asked Respondent to escort the exterminator around the command for the purpose of extermination. Respondent was upset and said that she did not want to do so. She asked Adams to ask another MOS in the "LAPS" office to do so. Adams said "no, she had to do it."

Respondent, upset, spoke to the PAA who was also working as the TS operator and asked why Adams was making her do that when other MOS were available. Respondent looked displeased and was sarcastic.

Respondent ultimately escorted the exterminator around the stationhouse that day and it took about 45 minutes. After she returned to the desk, she picked up her bag, said that "she was going to get something to eat" and started walking towards the 124 Room, which is directly opposite the desk. Adams told Respondent "to take her meal now, that she should take her meal since she wanted to get something to eat." Respondent asked Adams if she could take a later meal and he refused her request.

Respondent walked into the 124 Room and Adams again told her to take her meal. Adams asked Respondent to put herself into the Interrupted Patrol Log but Respondent did not.

Adams then stood up and walked to see Respondent in the 124 Room and he asked her, "Hey, Officer Christie, did I ask you, did I tell you to put yourself in the book, in the

Interrupted Patrol Log. Then I said, you know what, I will put you in.” Adams said that he directed Respondent twice to place herself in the Interrupted Patrol Log because he wanted her meal period, which is usually documented in the Interrupted Patrol Log, to start. When Respondent failed to do so, Adams placed Respondent in the Interrupted Patrol Log.

Respondent walked out of the 124 Room and said to Adams, with an attitude and in a belligerent and disrespectful tone, “that’s what you’re supposed to do,” and walked towards the mailboxes that were right behind the TS desk. Adams responded that if he tells her to place herself in the Interrupted Patrol Log, she is supposed to do so. According to Adams, as a desk officer, he is permitted to delegate that responsibility to an officer, which happens routinely in the 62 Precinct.

On cross-examination, Adams could not recall the specific rule that allows a desk officer to delegate his administrative duties to a police officer. Adams admitted that Respondent was not on patrol. Adams said that he understood the Interrupted Patrol Log to mean “that anyone who is in the command or comes into the command, interrupted patrol, like you said sectors that are on patrol in a sector, or we use it as well for anyone who is going to meal in the command who the desk officer sees fit.” However, Adams could not cite a rule that stated that those with assignments inside the command are to enter themselves in the Interrupted Patrol Log.

Adams admitted that the Interrupted Patrol Log was for MOS “coming off patrol and com[ing] into the stationhouse for whatever reason.” Adams admitted that the desk officer uses the Interrupted Patrol Log to account for everyone at the stationhouse.

Adams testified that Respondent was assigned as the TS operator on the date of the incident, and that it was an inside post. Adams did not recall if she had, in the previous

four months, had open heart surgery but knew that she had had heart surgery in the past. He did not know the details of the surgery. Adams testified that he saw Respondent's name on the roll call but he did not remember if there was a notation on the back that said she was restricted. He admitted that his duties and responsibilities included knowing such information.

Adams denied that Respondent told him that she did not walk around the building because she had medical restrictions. Adams denied that Respondent told him that she "just had open heart surgery." Adams denied that Respondent told him that she carried a bag of medication that she needed to take as a result of the recent open heart surgery.

Adams admitted that at the time he asked Respondent to walk around the stationhouse with the exterminator, there were other MOS present but said that Respondent did not express reservations about doing the task because of her restrictions.

Adams admitted that he directed Respondent to take her meal and that it might have been earlier than 11 a.m. Adams did not know if Respondent had received instructions from the administrative lieutenant to take her meal at the time designated on the Roll Call.

Adams testified that he issued Respondent a CD for being discourteous and for failing to follow his instructions.

On re-direct examination, Adams testified that at the time he directed Respondent to go to meal, she was headed to the 124 Room to eat.

Police Officer Thomas Chan

Chan, an eight-year member of the Department, is assigned to patrol at the 62 Precinct. On August 31, 2012, Chan was assigned the 7:05 a.m. to 3:40 p.m. tour, doing patrol. He returned to the command briefly to help his partner process an arrest. While at the command, he was temporarily assigned as the TS operator. Chien was the desk officer at the time.

At some point that day, Chan learned that Respondent had gone to the hospital because of her heart problems. Chien gave Chan a directive to contact Respondent – “to call up and find out her status, and to let her know come back” to the command after she left the hospital.

Chan, using his cell phone, called Respondent on her cell phone. Chan spoke with Respondent, who told him that she was at the hospital. Chan told Respondent, “hey, where are you? The sergeant, you know, wants you to come back. Something along those lines, not those exact words, but that’s it.” Chan also needed information from Respondent in order to prepare the Aided Report Worksheet, and Respondent provided him with the information.

Chan testified that Respondent was “irate about going to the hospital without an escort.” Chan did not remember saying anything else to Respondent, and he did not have any further contact with Respondent after that day.

On cross-examination, Chan said that Chien asked him to call Respondent because he needed information for the Aided Report Worksheet, which Chan subsequently received. Chien never told Chan whether it was appropriate to contact Respondent while

she was being treated. Chan did not know Department policy with respect to handling MOS while they were being treated at the hospital.

Respondent's Case

Respondent called Police Administrative Aide Tiffany Small as a witness and testified in her own behalf.

Police Administrative Aide Tiffany Small

Small, a four-year member of the Department, is assigned to the 62 Precinct as a PAA, where she enters and files complaints, helps complainants and assist the officers. Small knows Respondent in that they worked together when their schedules permitted it.

Small testified that Respondent told her she had problems with her [REDACTED] and had a prior surgery. She did not know if other members of the service knew that Respondent had had [REDACTED].

On February 24, 2013, Small was working the 6:00 a.m. to 2:00 p.m. tour. She was assigned to the 124 Room, which is diagonal from the desk. Small recalled that Respondent was working that day as the TS operator, which is to the right of the 124 Room and across from the desk officer, who was Luciano on that day.

Small was in the 124 Room when she heard Luciano, in a regular tone, ask Respondent to clean the cells. She believed that Respondent replied that she was not feeling well. Luciano asked her again to follow his order. Respondent again replied that she did not feel well and that she was "limited, restricted." Luciano asked her "again. Like it was asked a few times." Small testified that Luciano told Respondent that if she was not

feeling well, then she should leave or clean the cells. She said that the conversation between Respondent and Luciano lasted about five minutes and that Respondent was not yelling.

According to Small, Respondent left the area and about "five, ten minutes" later, Luciano asked Small to "go get her." Small said that Luciano sounded "a little aggravated." Small went downstairs to the locker room, where she saw Respondent not in uniform. Small told Respondent to "please come upstairs, the desk sergeant would like to see you" and then left.

Small testified that Respondent returned upstairs, but that Small was in the 124 Room and did not see the interaction between Luciano and Respondent. She heard yelling but was not sure who yelled or if it was a male or female voice.

On cross-examination, Small testified that Respondent did not appear ill. Small testified that during the incident, Respondent left the front desk and went to the locker room without Luciano's permission. Respondent was in regular clothing when Small saw her in the locker room.

On re-direct examination, Small admitted that she did not know what a sick person looks like and that when she testified that Respondent did not appear ill, she was basing it upon her personal opinion. Small also testified that she did not know whether Respondent had authorization to change her clothing.

On re-cross examination, Small testified that she did not hear Luciano give Respondent permission to change into civilian clothing.

Respondent

Respondent, a seven year member of the Department, is presently assigned to the VIPER command. Previously, she was assigned to the 62 Precinct.

Respondent testified that the 62 Precinct was difficult to get adjusted to because there were not many black people, and black women, assigned to the precinct. While assigned to the 62 Precinct, Respondent made several complaints to IAB about misconduct within the command. She could not recall her first complaint but she did continuously report misconduct and did not hear back from IAB. Her first complaint to IAB was in 2010, but she had also complained to the ICO of the command, Lieutenant Murray, about misconduct and he did “nothing” about her concerns.

On June 14, 2010, Respondent had [REDACTED]. She was out until about September 10, 2010, and she returned to limited duty, which meant that she was not on regular patrol.

With respect to Disciplinary Case No. 2010-2373, Respondent testified that on December 29, 2009, she was working full-duty. The temperature was 17 degrees and “it was freezing.” Hergenhan was one of the patrol sergeants and the desk officer that day. Respondent and her partner had to transport a prisoner, the “RMP had no heat and the brakes wasn’t working properly and I was driving.” Respondent told Hergenhan that the car did not have heat and he told her that the Patrol Guide did not require cars to have heat. Respondent testified that there were other RMPs available, but Hergenhan never offered to assign her another one.

Respondent testified that she had the conversation about the brakes not working properly with Hergenhan at the desk. At the time, Hergenhan was using his cell phone and

she had to wait to speak with him. While waiting, her hand “really” hurt as she had slammed it “in the door.”

Respondent saw two members of the service, Police Officers O’Geary and Postiglione, who had been previously assigned as the Eddie Frank sector, sitting at the TS. As Respondent tried to get Hergenhan’s attention, he leaned back and said, “you know what, Scalise and Christie just showed up, they are going to be the new sector Eddie, Eddie Frank” Respondent told Hergenhan that there was no heat in the car, the brakes were not working properly, and when she asked if she could have the sector Eddie Frank’s car, Hergenhan said “no, you are going to take the car you came in.” Respondent testified that there was another RMP available but Hergenhan did not reassign it to them.

Respondent denied that during this interaction, she took the RMP keys, slammed them on the desk and walked away. Respondent testified that she not only told Hergenhan that she had hurt her right thumb earlier when she slammed her hand in the car door, but she also showed him that “it was bleeding.” According to Respondent, Hergenhan disregarded her completely.

Respondent went downstairs to the locker room because she did not have her patrol bag and needed to take care of her hand. While downstairs, she made entries in her Activity Log about her interaction with Hergenhan for the purpose of documentation. Respondent testified that because of her previous “interactions with the 62,” she had been told to document. She also testified that due to an incident in July, 2009, at the command, she had a reputation as a “boss fighter.”

Respondent returned upstairs, after being told that the sergeant was looking for her, and she again pleaded for another car. Hergenhan refused her request. Respondent

explained that when Hergenhan told her to go on patrol, she had to retrieve her bag because she “was not on patrol previously. I was on a robbery fixed post, and I had no paperwork with me.” Respondent denied that instead of going on patrol, she went down to the locker room for 20 minutes. She denied that her whereabouts were unknown.

Respondent called two delegates, Police Officers Bailey and Papiano, that day to report the ineffective brakes. Respondent testified that her partner that day also knew that the brakes were not working. Respondent testified that because she reported the ineffective brakes to the desk officer, and he did not tell her to do anything further about it, she did not notify anyone else in the Department.

Respondent returned to patrol with the RMP with the broken heater and continued to drive it for the rest of her tour. She and her partner transported a male prisoner to Central Booking using the RMP.

According to Respondent, the Department policy is to take a car out of service if the brakes are not working; however, it was not done so here. Respondent did not know if the brakes were fixed after she reported the problem to the desk officer.

With respect to Disciplinary Case No. 2011-4558, Respondent testified that she was working at the 62 Precinct on November 17, 2010, assigned “the TS, 311.” The desk officer was Adams. Respondent testified that the TS was located beside the desk.

At about 8:50 a.m., Adams asked Respondent, who was on limited duty, to escort an exterminator. Respondent asked Adams if someone else could do so because she had open heart surgery four months prior, and that she is “not really supposed to be around the fumes. So medically, if somebody else could do it.” Adams told Respondent that there was no one else and she had to do it.

Respondent testified that stationhouse security is a priority, and that she understood why the exterminator had to be escorted through the precinct, as there was sensitive information and weapons around. However, Respondent said that she was on limited duty and she was not authorized to carry a firearm. Nevertheless, Respondent escorted the exterminator and was with him for over two hours.

Respondent testified that there came a point in time later that day when Adams ordered her to enter herself into the Interrupted Patrol Log. Respondent said that she understood the Interrupted Patrol Log as "if you are on patrol and for whatever reason you have to come into the precinct, you are supposed to put yourself in the book because now you interrupted your patrol."

Respondent testified that,

At first, I was, you know, when he told me to put myself in the interrupted patrol log, I just went to get something from the microwave that was already in there. He was like, you know what, I am going to put you in the interrupted patrol log, and then I am going to give you a CD. I was like you are going to give me a CD? I said but the interrupted patrol log, that's supposed to be in the sergeant's handwriting.

Respondent also said that she did not believe that she was supposed to be placed in the Interrupted Patrol Log if she was assigned inside the stationhouse.

With respect to Disciplinary Case No. 2012-8440, Respondent testified that she was assigned as the TS operator on August 31, 2012. At about 10 a.m., she was experiencing chest pains and was having difficulty breathing, of which she informed the desk officer, Chien. Respondent told Chien that she needed to go to the hospital and asked him if he was going to call her an ambulance. Respondent testified that Chien did not respond.

When Respondent went downstairs to change into civilian clothing, she asked the PAA whether an ambulance had been summoned. Respondent testified that at that point, Chien summoned her back to the desk and asked her what was wrong with her. Respondent told him that she was having chest pains and reminded him that she had had [REDACTED] surgery. She said that she needed to go to the hospital. Chien told Respondent to "go call yourself an ambulance. Go call yourself a bus."

Respondent testified that she changed into civilian clothing because of her past experience with the 62 Precinct when she went to the hospital, in that "the 62 has pulled their escort on me while I was in the hospital and they actually had me go to the hospital and come back by myself." Respondent said that in the past, the 62 Precinct had left her in the hospital while she was still in uniform.

According to Respondent, on that day, at about 10:20 a.m., an ambulance arrived at the command. Respondent entered the ambulance by herself and was taken to Maimondes Hospital, where she was treated and released at about 6:30 p.m. While she was at the hospital, no one from the command came to see her and to check up on her status. She received a phone call from Chan, who asked her for the doctor's name, which she gave him. The only conversation she had with anyone from the command that day was with Chan, who "wanted to know, because he was doing the aided, he needed the doctor's information." No supervisor or desk officer ever called her while she was at the hospital that day. Respondent denied that she was ever given an order that day from a superior officer to notify the command when she was released from the hospital.

Respondent testified that she told her supervisor at the precinct that day that she was going out sick. After she left the hospital, she called the Sick Desk and reported sick.

It was after her tour. Because no line of duty paperwork had been prepared, she went "regular sick." Respondent said that although the line of duty report should have been prepared that day, it never was.

With respect to Disciplinary Case No. 2013-9695, Respondent said that she did not remember the incident. She recalled being questioned by Brown about it, during her official Department interview on March 26, 2013, after she was suspended. Brown showed her a list referring to "something about a massage table," which she would have remembered returning.

With respect to Disciplinary Case No. 2013-9127, she was working a day tour and there came a time when Luciano asked her to clean the cells. She walked to the cell area, looked inside, saw no garbage, turned off the lights, locked the door and returned to the TS. She told Luciano that "there was no garbage in the cells, and I turned the lights off and closed the door. He said for me to go clean the cells."

Respondent understood cleaning the cells to mean sweeping and mopping. She told Luciano that she "could not do that. I told him I wasn't feeling well and that I was having migraines. I told him just the smell alone was making me nauseous. He was like go clean the cells." Again, Respondent told him she could not do so physically and that she was not feeling well. Luciano told her to "clean the cells or go sick."

Respondent testified that she called the Medical Division to determine if the District Surgeon was in. She was told to come in because it was a Sunday. Respondent told Luciano that the Medical Division asked her to come in. Respondent asked Luciano "am I going on my own or is someone going to take me. He said he is not sure yet." She asked if she should change into civilian clothing, and he said yes.

Respondent testified that she went downstairs and due to her interaction with Luciano, she called IAB because she "was being picked on because of my limited, you know, abilities and I was sick, and he is telling me that I am going to get suspended, clean the cell or get suspended...." While she was on the phone with IAB, Small knocked on the door and Respondent said she "will be right up."

When she returned to the desk, Luciano told her to clean the cells or she will be suspended. She asked him for "a minute" because she wanted to call the investigator from IAB as to how she should respond. When she asked for "a minute," Luciano said that she was suspended. She immediately called IAB and said that she was being suspended for being sick. Luciano approached her and asked for her identification, which she gave him while on the phone with IAB. IAB later called her back with a log number.

Respondent was subsequently suspended. She met with the duty captain and explained that "the lights really hurt [her] eyes" and that she had "really bad migraines." After she was suspended, she was escorted to [REDACTED] with a member of the service, who stayed with her at the hospital until she was discharged, and then brought her back to the precinct.

Respondent denied that she failed to follow a lawful order to check the holding cell for cleanliness. She denied that she was absent from her assignment as a TS operator without permission or police necessity. She denied changing out of her uniform without permission to do so. She said that she changed for her own protection because "the 62 has a tendency of leaving me at the hospital or sending me to the hospital by myself." She did not recall responding dismissively by saying, "Do what you have to do." She believed that she was not treated fairly under the circumstances.

With respect to Disciplinary Case No. 2013-8931, Respondent testified that she notified OEEO about the officers who were sleeping when they were supposed to be working because she believed that she was “being discriminated against and [she] went to OEEO with [her] claims.” She submitted photographs to OEEO and reported the misconduct. She did not know if OEEO reported the misconduct to IAB.

Respondent testified that she did not notify IAB about the sleeping misconduct, although she had in the past notified IAB about “a number of incidents.” She said that she told the ICO but did not tell IAB directly “because when I went to OEEO with a previous incident that they deemed was IAB related, they referred it to IAB and gave me the log number. So when I reported that to OEEO and they never got back to me to say it needs to go to IAB, I just felt they were handling it.”

Respondent testified that she reported the sleeping misconduct to OEEO because while she was sick and after her surgery, while assigned as the TS operator, she “couldn’t even get a break.” She would ask “for a break” and would be told that no one was available to relieve her, even when she would name an available officer in the precinct. She would be told that “[s]he is doing something, he is doing something, while they are just sleeping. So that’s one of the reasons why [she] did take the picture.” She took the picture to provide proof of the disparate treatment because she had “to beg for a break to take [her] medication” which was not fair to her.

Respondent testified that she did not know if the members of the service were disciplined after she notified the Department of the misconduct. She was disciplined, however.

On cross-examination, Respondent testified that on December 29, 2009, she conducted a prisoner transport with Scalise and afterwards, she returned to the stationhouse. She approached the desk, eventually spoke with Hergenhan and informed him that she needed another RMP because the heat and the brakes in the vehicle were not working. According to Respondent, she also complained to Scalise about the brakes not working.

Respondent testified that in her Activity Log that day, she wrote that the heat in the car were not working. She also wrote that it was 17 degrees according to the station New York 1. However, she did not mention "brakes" in her Activity Log.

Respondent testified that on November 17, 2010, she worked the TS at the 62 Precinct. After escorting the exterminator, she went to the 124 Room for the purpose of using the microwave to heat some oatmeal to take with her medication. She testified that she usually ate the oatmeal at the desk. According to Respondent, Adams directed her to put herself in the Interrupted Patrol Log and Respondent never did. Respondent admitted that she told Adams that he was supposed to place her in the log and testified that sergeants in the stationhouse at times delegate responsibility and ask officers on patrol to place themselves in the Interrupted Patrol Log.

Respondent testified that on August 31, 2012, she went to the hospital during her tour of duty. When she was released from the hospital at 6:26 p.m., she admitted that she did not notify the desk officer and did not return to the 62 Precinct. Respondent testified that after she was discharged, she went home.

Respondent testified that at about 8:00 p.m. that day, she called the Sick Desk, explained what had happened and reported sick. She did not intend to report for her next

tour of duty and intended to go to the District Surgeon. She did not notify a 62 Precinct supervisor or the desk officer that she was going sick because she left the precinct in an ambulance.

Respondent testified that she worked on October 7, 2012, when Anselmo was the desk officer. Respondent identified her electronic signature on the property return receipt (DX 2). Respondent admitted that the Property Clerk Invoice (DX 1) was marked as arrest evidence but testified that DX 2 was not marked as arrest evidence. She testified that the status of the property changes from arrest evidence. "If the District Attorney decides they are not going to prosecute, the status changes and you return property." She denied returning the property to its owner without checking as to whether it remained arrest evidence. Respondent testified that she always consulted with the desk officer before returning the property.

Respondent testified that on February 24, 2013, she worked as the TS operator at the 62 Precinct. During her tour, Luciano ordered her to clean the cells. According to Respondent, she told him that she was restricted, inspected the cells, turned off the lights and locked the door. Respondent testified that when Luciano told her to do a more thorough cleaning, she was not able to do so. Luciano never specifically told Respondent to mop or sweep the floor.

Respondent testified that it was a small cell, so she stood by the door and looked inside. She did not know what Luciano wanted her to do, in that she did not know he wanted her to go all the way in to check for cleanliness. Respondent was ill, had been hospitalized twice for migraines, had migraines that day, and could not clean the cells.

When Luciano ordered Respondent to go sick, she called Lefrak and was instructed to go there. However, she did not go sick.

Respondent testified that between October 8, 2010, and April 24, 2012, she observed uniformed members of the service sleeping in the female locker room but she did not notify IAB of her observations.

FINDINGS AND ANALYSIS

This matter involves some 13 specifications that are alleged to have occurred on six dates between December 29, 2009 and February 24, 2013. It should be stated at the outset that the Department Advocate (Advocate) is seeking a penalty involving Respondent's dismissal from the Department.

Disciplinary Case No. 2010-2373

Specification Nos. 1, 2, and 3 all deal with one incident on December 29, 2009, at the 62 Precinct. Specification Nos. 1 and 3 charge Respondent with being discourteous towards Hergenhan, by slamming the keys of the RMP on the desk and walking away when told that she would not be assigned another vehicle and by failing to immediately resume patrol after being directed to do so. Specification No. 2 charges Respondent with being off-post, without permission or police necessity, by not immediately resuming patrol after being ordered to do so and instead going to the women's locker room for about 20 minutes.

There is no question that on this date Respondent complained to Hergenham that she did not want to use the RMP in question. Hergenham stated that the reason she gave

was the heater was not working and that it was extremely cold out. Hegenham further testified that when he refused to give her another RMP, Respondent slammed the keys down on the desk and walked away.

Respondent agrees that she complained about the vehicle but says her complaint was not only about the heater but about the brakes not working. She also denies having slammed the keys on the desk.

Obviously, defective brakes constitute a more serious issue than a non-functioning heater. There is no evidence to support Respondent's claim that she complained about the brakes and indeed even in notes she made in her Activity Log that day, she made no mention about brake problems with the vehicle.

The fact that Respondent initially refused to go on patrol with the vehicle and instead went to the locker room is corroborated by Scalice and Respondent herself.

I accept Hegenham's testimony that Respondent slammed the keys on the desk because it is consistent with other events and behaviors of Respondent at that time.

Consequently, I find Respondent Guilty of the three specification in this disciplinary case.

Disciplinary Case No. 2011-4558

Specification Nos. 1 and 2 deal with one incident on November 17, 2010, at the 62 Precinct. Specification No. 1 charges Respondent with failing to obey the lawful order and/or instruction of Adams to enter herself into the Interrupted Patrol Log. Specification No. 2 charges Respondent with being discourteous to Adams after he directed her to escort

an exterminator at the command, to place herself in the Interrupted Patrol Log and advised her that he would issue her a CD.

It is undisputed that on June 14, 2010, Respondent had [REDACTED] surgery. She was out on sick report until about September 10, 2010, when she returned to limited duty, which meant that she was not on regular patrol and she was not authorized to carry a firearm.

On November 17, 2010, about two months after Respondent had returned to the 62 Precinct following the surgery, Adams, the desk officer and Respondent's supervisor, asked Respondent, the TS operator, to escort an exterminator, who was an outside contractor, around the stationhouse.

It is not disputed that upon being told to perform the task, Respondent asked that another member of the service escort the exterminator. Respondent testified that she asked Adams to be spared the task because she was "not really supposed to be around the fumes. So medically, if somebody else could do it." When Adams denied her request, Respondent did as Adams directed her to do and finished the task in anywhere from 45 minutes, according to Adams, to over 2 hours, according to Respondent.

After Respondent returned to the desk, Adams testified that she picked up her bag and told him that she was getting something to eat and walked towards the 124 Room, which was directly opposite the desk. Adams denied that Respondent told him that she carried a bag of medication that she needed to take as a result of the recent [REDACTED] surgery.

Respondent testified that she walked towards the 124 Room for the purpose of using the microwave to heat some oatmeal to take with her medication. She usually ate the oatmeal at the desk.

Seeing Respondent walk towards the 124 Room, Adams directed her “to take her meal now.” Adams testified that Respondent asked him if she could take a later meal and he said no. He told her again to take her meal and twice, he told her to place herself in the Interrupted Patrol Log because he wanted her meal period, which is usually documented in the Interrupted Patrol Log, to commence.

It is undisputed that after being directed twice by Adams to place herself in the Interrupted Patrol Log, Respondent, by her own admission, failed to do so. Respondent’s reasons for not doing the task – that she was not on patrol and thus did not have to enter her name in the log and that it was the responsibility of the sergeant to put her name in the log – do not justify her refusal to obey the lawful order of Adams.

After Adams placed Respondent in the Interrupted Patrol Log, he testified that Respondent said, with an attitude and in a belligerent and disrespectful tone, “that’s what you’re supposed to do.” Even Respondent admitted that she told Adams, “but the [I]nterrupted [P]atrol [L]og, that’s supposed to be in the sergeant’s handwriting.” Adams subsequently issued Respondent a CD for being discourteous and for failing to follow his instructions.

Respondent has argued that it is the sergeant’s responsibility to make entries in the Interrupted Patrol Log but there is nothing to prevent a sergeant from directing an officer to do so.

Based on the foregoing, the Advocate has established by the preponderance of the credible evidence that on November 17, 2010, Respondent failed to obey the lawful order and/or instruction of Adams to enter herself into the Interrupted Patrol Log. Thus, Respondent is found Guilty of Specification No. 1.

Specification No. 2 charges Respondent with multiple acts of misconduct, in that she was discourteous to Adams after he directed her 1) to escort an exterminator at the command, 2) to place herself in the Interrupted Patrol Log and 3) advised her that he would issue her a CD.

To prove the misconduct, Adams testified that upon being told to escort the exterminator, Respondent looked upset and displeased. There was even testimony by Adams that Respondent asked a PAA why Adams was making her do that when other members of the service were available. Assuming this to be true, it does not rise to the level of courtesy, especially given the fact that she escorted the exterminator around the command, as she was directed to do, for anywhere from 45 minutes to over 2 hours. Furthermore, the only proof that Respondent was discourteous after being told that she would be issued a CD seems to be her statement to Adams, "you are going to give me a CD?" Again, this does not rise to the level of courtesy.

However, the evidence credibly established, through Respondent's own admissions as well as Adams' testimony, that she was discourteous to Adams after he directed her to place herself in the Interrupted Patrol Log. When she did not do so, Adams placed Respondent in the Interrupted Patrol Log, and he testified that Respondent said, with an attitude and in a belligerent and disrespectful tone, "that's what you're supposed to do." Even Respondent admitted that she told Adams, "but the [I]nterrupted [P]atrol [L]og, that's

supposed to be in the sergeant's handwriting." Thus, the Advocate proved by the preponderance of the credible evidence that Respondent was discourteous to Adams after he directed her to put herself in the Interrupted Patrol Log.

Thus, Respondent is found Guilty in Part and Not Guilty in Part of Specification No. 2.

Disciplinary Case No. 2012-8440

Specification Nos. 1 and 2 deal with one incident on August 31, 2012, at the 62 Precinct. Specification No. 1 charges Respondent with failing to obey the order(s) and/or instructions of a supervising officer in that she went to the hospital during her tour of duty and failed to return to the 62 Precinct or failed to notify a supervisor when she was released from the hospital that day, as she was ordered/instructed to do so by a superior officer. Specification No. 2 charges Respondent with reporting sick for her next scheduled tour and failing to notify the desk officer or supervisor at her assigned command.

Respondent admitted that on August 31, 2012, while assigned as the TS operator at the 62 Precinct, she experienced chest pains and had difficulty breathing, of which she informed the desk officer, Chien, and requested an ambulance. It is undisputed that at about 10:20 a.m. that day, an ambulance took Respondent, without an escort, to

[REDACTED], where she was treated and released at about 6:26 p.m. Respondent admitted that upon her release, she did not notify the desk officer and did not return to the stationhouse. The issue is whether Respondent, by neither notifying nor returning, failed to obey the order(s) and/or instructions of a supervising officer.

On the one hand, Respondent denied that she was ever given an order that day from a superior officer to notify the command when she was released from the hospital, and she testified that she told her supervisor at the precinct that day that she was going out sick.

On the other hand, Chien testified that when the ambulance arrived at the stationhouse to take Respondent to the hospital, he told her to provide him with an update on her status and to return to the stationhouse when she left the hospital, in order to finish the line of duty paperwork. Chien also testified that at some point that day, he asked Chan to call Respondent on her cell phone and Chien, through Chan, ordered Respondent to notify the command when she was finished at the hospital and to return to the command after her release. Chan testified that, following Chien's directive, he called Respondent at the hospital and told her, "hey, where are you? The sergeant, you know, wants you to come back. Something along those lines, not those exact words, but that's it." Respondent admitted that Chan called her on her cell phone at the hospital that day but said that it was simply to request the name of her doctor.

Overall, Chan's and Chien's testimonies are more credible than Respondent's relating to this issue. Respondent admitted that Chan called her and Chan testified that he conveyed Chien's order, which was for Respondent to notify the command of her release and to return to the stationhouse. Respondent was on notice that a supervisor wanted her to return to the command and for her to communicate her whereabouts. Respondent failed to do any of these things and is found Guilty of Specification No. 1.

After her discharge from the hospital on August 31, 2012, Respondent admitted that she went home and at about 8:00 p.m., she called the sick desk, explained what had happened and reported sick. She testified that she did not intend to report for her next tour

of duty and intended to go to the district surgeon. She admitted that she did not notify a 62 Precinct supervisor or the desk officer that she was going sick. Thus, based on her own admission, Respondent is found Guilty of Specification No. 2.

Disciplinary Case No. 2013-8931

Specification No. 1 charges Respondent with, on or about and between October 8, 2010, and April 24, 2012, at the 62 Precinct, having become aware of corruption or other misconduct involving members of the service, failed and neglected to notify the IAB Command Center.

The facts underlying this disciplinary case appear simple and are undisputed, but there are reasons, which will be explored in the penalty portion, as to why it is counter-productive by the Advocate to seek such a harsh penalty against Respondent under the circumstances here.

Respondent admitted that between October 8, 2010, and April 24, 2012, she observed misconduct at the 62 Precinct, which was uniformed members of the service sleeping in the female locker room, and that she took photographs of the misconduct, which she submitted to OEEO. Respondent admitted that although she notified OEEO about the misconduct, she never notified IAB. Thus, based upon her own admissions, Respondent is found Guilty of Specification No. 1.

Disciplinary Case No. 2013-9127

The four specifications in this case all deal with an incident that occurred on February 24, 2013, at the 62 Precinct. Specification No. 1 charges Respondent with failing

to follow the lawful order of a sergeant to check the precinct's holding cell area and/or arrest processing area for cleanliness.

There is no question that Luciano asked Respondent to do something with regard to the holding cells in the precinct but there is a significant discrepancy in the testimony about what Respondent was told to do.

Luciano testified that he ordered Respondent, who was working as the TS operator, to inspect the cells. After complaining about her limited duty status, Respondent went to the cell area. Luciano said that he watched the monitor and did not see her turn on the light or enter the cell area.

According to Luciano the serious confrontation occurred when he ordered her back to the cell area to do the inspection and that is the point in time at which she refused and the confrontation which led to the charges occurred.

Respondent also testified that when she was told to inspect the cells, she went to the cell area. Respondent claimed she did a visual inspection of the cells, saw no garbage and returned to the desk. She said she was told by Luciano to "clean" the cells and said she could not do that for medical reasons.

This then brings us to the question of what exactly Luciano told Respondent to do. Luciano testified that he told Respondent essentially to do a visual inspection, to look for contraband or debris. If she found debris, she was basically to pick it up and if she found contraband she was to report it. It is instructive to note that specification itself in this case speaks only of "inspection" and not "cleaning" of the cell. The problem is that the Department's own eyewitness, Kajewski, testified that Respondent was told to "clean" the

cells, which he took to mean not only picking up garbage but to sweep the floors. This version of what was ordered is confirmed by Respondent's witness, Small.

There is no question that Respondent initially tried to avoid whatever assignment was given to her by citing her health and limited duty status. There is also no question that after Luciano confirmed that there were no prisoners in the cells Respondent went to the cell area.

Luciano testified that he looked at the video monitor but did not see Respondent in the cell area. However on cross examination, he conceded that he could not see the entry area. Respondent claims she went to the entry area, did a visual inspection and found neither debris nor contraband.

If Luciano ordered Respondent to "clean" the cells, Respondent certainly did not do that. On the other hand, if all he asked her to do was to inspect the cells, as he himself testified, there is no real evidence to establish that Respondent did not go to the entry and inspect the cells visually. In this regard, it should be kept in mind that Luciano said the entire area was small so there is no indication that Respondent could not have done the inspection for a location near the entry out of his vision on the monitor. More significantly, there is absolutely no testimony or evidence that there was either debris or contraband in the cells.

There is insufficient evidence to establish that Respondent failed to do what Luciano testified he order her to do with regard to the cell area. Therefore, Respondent is found Not Guilty of Specification No. 1.

The remaining three specifications deal with events that happened after this alleged refusal by Respondent. Specification No. 2 charges Respondent with being absent from her

assignment as the TS operator. Specification No. 3 charges Respondent with having changed out of her uniform without permission or authority to do so. Specification No. 4 charges Respondent with acting in a discourteous manner in that when Luciano warned her that she would face suspension if she failed to follow his instruction, Respondent responded dismissively and said, in sum and substance, "Do what you have to do."

The facts behind Specification Nos. 2 and 3 are confusing, even looking solely at Luciano's testimony. Luciano testified that when Respondent said she could not clean the cells for health reasons, he told her to call in sick. Respondent said she then called the Sick Desk and was told to come in to the Medical Division. Both Respondent and Luciano agree Respondent went down to the locker room area and changed. After about 20 minutes, Respondent returned dressed in civilian clothes. Luciano said he had not given her permission to change.

Luciano's version of what occurred when Respondent returned to the main level of the precinct is very different than Respondent's version. Luciano said the dispute he had with Respondent at that time was whether she had called in sick at that point in time and that Respondent had refused to answer.

Respondent's version of what occurred is that when she returned from the locker room she was again directed to clean the cells.

In this instance, I find Respondent's version more credible because, among other things, her version makes more sense.

Luciano acknowledges that he told Respondent to go sick. He acknowledges that Respondent went to the locker room with his knowledge and apparent consent. Those circumstances would lead one to conclude that Respondent was in fact going sick as

Luciano said he had suggested. Further, Luciano, on cross-examination, acknowledged that when he called the duty captain to explain why he wanted Respondent suspended, the reason he gave was that Respondent failed to follow his order to clean the cells.

Because Luciano was aware of, and gave a tacit permission for Respondent to leave the TS and go to the locker room Respondent is found Not Guilty of Specification No. 2. Because the circumstances, as Luciano explained them, lead to the conclusion that Respondent changed so she could go sick as Luciano had suggested, Respondent is found Not Guilty of Specification No. 3.

As noted, Specification No. 4 charges Respondent with being discourteous for saying, "do what you have to do" when she was told she would be suspended if she did not obey Luciano's order. Whether that phrase, by itself, is discourteous, is an interesting question which probably turns to a large extent on the circumstances surrounding it.

The specification claims that it was said, "dismissively." But Luciano testified that when Respondent said it she was not loud but not paying attention to him. Again it must be kept in mind that Luciano, in his testimony, claimed the disagreement at that point was over whether Respondent was going sick or not, none the less he testified that the suspension was for not cleaning the cells. Indeed, Luciano testified that what Respondent said was that, "if you are going to suspend me for not cleaning the cells then do what you got to do."

So the circumstances surrounding this statement was that Respondent, who was apparently ready to go out sick as instructed, was again being told to clean the cells. Under those circumstances what Respondent apparently was saying was that she felt the order was improper. Respondent is found Not Guilty of Specification No. 4.

Disciplinary Case No. 2013-9695

Specification No. 1 charges Respondent, while on-duty and at the 62 Precinct on October 7, 2012, with returning property listed as "Arrest Evidence" to an individual that was previously arrested without the permission of a supervisor or the investigating officer. While Respondent does not recall signing the release, she does acknowledge that her electronic signature appears on the release. While Respondent testified that she always checks with a supervisor before releasing property, the fact is that there is no evidence of supervisory approval on the release of property form (DX 2). Respondent is found Guilty of the sole specification in this case.

Retaliation

At various times during this proceeding counsel for Respondent mentioned the issue of retaliation. However, an examination of the trial record indicates that when the Advocate asked for information about the complaints filed by Respondent against members of the Respondent's command, counsel for Respondent declined to provide that information and indicated that he would pursue the retaliation issue in another forum (T. 94).

As the record stands, there is insufficient information about the complaints Respondent alleged that she made and retaliation has therefore not been established as an issue in this proceeding.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent

was appointed to the Department on January 10, 2007. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Advocate has recommended that Respondent be dismissed from her position with this Department. On the face of it this, penalty recommendation is disproportionate to the offenses alleged. To better assess an appropriate penalty it is necessary to review each set of charges.

While the discourtesies and failure to obey orders are troubling, none involve critical police work, some have mitigating circumstances or involve relatively minor infractions.

For instance, the events of December 29, 2009 relate to the complaint that the RMP she was asked to go on patrol in had no heater. It is uncontested that the day was quite cold. In the end Respondent went on patrol with the vehicle.

On another occasion, on November 17, 2010, Respondent was asked to escort an exterminator to the cell area, a task she ultimately completed. Respondent had not wanted to accompany the exterminator because she had had open heart surgery several months earlier. While Respondent completed the task without negative consequences her reluctance is not entirely beyond understanding.

On yet another occasion, on August 31, 2012, Respondent while on duty went unescorted to the hospital. Her offense is that she failed to return to the command upon her release. This is a violation but not one of great gravity, certainly not the substance of a termination offense.

Particularly troublesome is the charge with regard to Disciplinary Case No. 2013-8931 in which it is alleged that she failed to notify IAB of misconduct. There is no question that she notified responsible authorities within the central administration of this Department of the misconduct. Members of the service assigned to that command would have the same responsibility under the very same Patrol Guide section to notify IAB about the misconduct.

There is no question that Respondent should have reported the misconduct directly to IAB herself, but imposing a penalty for reporting misconduct to the wrong office might give the impression that Respondent was being penalized simply for reporting misconduct. In assessing a penalty, I specifically exclude this specification from any monetary penalty recommendation.

Similarly, the charge that Respondent released arrest evidence is mitigated by the fact that there is nothing in the trial record to indicate that the property Respondent released was actually needed in connection with any criminal case. Indeed it appears that she returned personal property to the person from whom it had been taken.

The most serious offense Respondent appears to have committed involves her courtesy to Sergeant Hergenhan on December 29, 2009 and her courtesy to Sergeant Adams on November 17, 2010. A review of relevant cases indicates the following precedent:

In *Disciplinary Case No. 2507/10, signed March 2, 2012* a five-year police officer with no prior disciplinary history negotiated a penalty of 25 vacation days for failing to comply with an order issued by a supervisor to prepare a Missing Persons Report for two teenage brothers.

In *Disciplinary Case No. 84802/08, signed May 4, 2012* a nineteen-year police officer with no prior disciplinary record forfeited 15 vacation days for failing to comply with a sergeant's directives that she return to the

locker area to adjust her uniform. Instead of complying, Respondent discourteously walked away.

In *Disciplinary Case No. 4858/11, signed May 9, 2012* a five-year police officer with no prior disciplinary history negotiated a penalty of 33 pre-trial suspension days without pay for failing to perform a prisoner transport after having been directed to do so by a sergeant.

In *Disciplinary Case No. 7525/12, signed March 26, 2013* a twenty-three year police officer with no prior disciplinary history negotiated a penalty of 30 pre-trial suspension days for failing to take his post to guard a hospitalized prisoner after being directed by a supervisor.

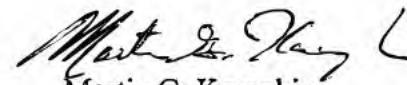
In *Disciplinary Case No. 5047/11 signed on June 11, 2013* a nine-year police officer with no prior disciplinary record negotiated a penalty of 28 suspension days and two vacation days for refusing to comply with an order from a supervisor to report to the Medical Division and saying "I am not going to speak with you" before hanging up when on the phone.

It should be noted that in apparent contrast to these cases, in the two courtesy cases involving this Respondent, she ultimately did what she was ordered to do so that on December 29, 2009 she did go out on patrol and on November 17, 2010 she did escort the exterminator around the command.

Looking at the entirety of this case, it is apparent that these matters could have been handled better by all parties. For her part in this Respondent, who has been both discourteous and failed to follow procedures, should be penalized with the loss of 20 days without pay already served on pre-trial suspension (February 24, 2013 to March 15, 2013). The remaining 10 suspension days (March 16, 2013 to March 25, 2013) Respondent has already served should be restored.

Respectfully submitted,




Martin G. Karopkin
Deputy Commissioner Trials

POLICE DEPARTMENT
CITY OF NEW YORK

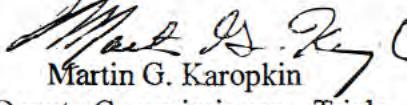
From: Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER DENIECE CHRISTIE
TAX REGISTRY NO. 943084
DISCIPLINARY CASE NOS. 2010-2373, 2011-4558, 2012-8440,
2013-8931, 2013 9127 & 2013-9695

Respondent has received an overall rating of 3.0 "Competent" on her last three evaluations. She has been awarded one medal for Excellent Police Duty. I [REDACTED] [REDACTED] S

For your consideration.



Martin G. Karopkin
Deputy Commissioner Trials